IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TENNESSEE, SOUTHERN DIVISION AT CHATTANOOGA

TONIA FIELDS, Individually and As mother and next friend of A.H., and as assignee of the Estate of CHRISTIAN CONNIOR,))))
Plaintiff,)
vs.	Case No. 1:12-cv-00061 U.S. Magistrate Judge: Carter (by consent)
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,)))) JURY DEMANDED
Defendant.)

STATE FARM'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, defendant, State Farm Mutual Automobile Insurance Company ("State Farm"), by and through its counsel of record, moves this Court for entry of an Order granting State Farm summary judgment. No genuine issue of material fact exists, and State Farm is entitled to judgment as a matter of law. In support of this Motion, State Farm would incorporate by reference the Motion for Judgment on the Pleadings and supporting memorandum (D.E. #8 & 9) and Reply to Plaintiff's Response to State Farm's Motion for Judgment on the Pleadings (D.E. #19) and all exhibits attached thereto, as if recited verbatim herein. Further, in compliance with Federal Rule of Civil Procedure 56(c), State Farm

¹ State Farm's Reply to Plaintiff's Response to State Farm's Motion for Judgment on the Pleadings (D.E. #19) noted that a Motion for Judgment on the Pleadings pursuant to Fed. R. Civ. P. 12(c) is converted to and analyzed as a Rule 56 Motion for Summary Judgment if it relies upon documents or evidence not contained within the record. (Reply at pp. 3-4).

would incorporate by reference the simultaneously filed Statement of Undisputed Facts in support of State Farm's Motion.

The current scheduling order requires that all dispositive motions be filed on or before October 2, 2012. (D.E. #7). State Farm would draw this Court's attention to the fact that Plaintiff has not responded to interrogatories, requests for production and requests for admissions propounded by State Farm on August 17, 2012. (See Notice of Service of Discovery D.E. #24). As of the filing of this motion, State Farm has not received Plaintiff's response to the requests for admission. Based upon Plaintiff's failure to respond within the thirty (30) days as required by Fed. R. Civ. P. 36(a)(3), State Farm would show this Honorable Court that those requests for admissions should be considered admitted, and the facts contained therein considered established and undisputed. State Farm reserves the right to seek further assistance of this Court to obtain discovery responses, and further reserves the right to amend and/or supplement these summary judgment materials once discovery responses have been received.

Respectfully submitted this 28th day of September, 2012.

THOMASON, HENDRIX, HARVEY, JOHNSON & MITCHELL, PLLC

Albert C. Harvey (7955) *Christopher L. Vescovo (14516) *Jonathan L. May (27408) 2900 One Commerce Square 40 South Main Street

Memphis, TN 38103 901-525-8721

By: /s Albert C. Harvey

Attorneys for Defendant, State Farm Mutual *Automobile Insurance Company*

² Counsel for State Farm conferred with Plaintiff's counsel on September 26, 2012, at which time Plaintiff's counsel stated that the discovery responses were mailed on September 11, 2012, but were returned to sender. Plaintiff's counsel further stated that the responses were re-mailed on or about September 24, 2012. State Farm has not received any discovery responses as of the filing of this Motion.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served, via the courts ECF filing system, this the 28^{th} day of September, 2012, upon:

Robert G. Norred, Jr. (#12740) Attorney for Plaintiff PO Box 191 Cleveland, TN 37364 rnorred@loganthompsonlaw.com

s/	Albert	C .	Harvey	
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* Mr. Vescovo and Mr. May have applied for admission to the Eastern District and are scheduled to be sworn in on November 5, 2012.

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